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11 **Attorney for Plaintiff DAVID J. LEE**

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 **DAVID J. LEE, an individual and, on**
15 **behalf of others similarly situated,**

16 **Plaintiff,**

17 **vs.**

18 **CAPITAL ONE BANK and CAPITAL**
19 **ONE SERVICES, INC., Virginia**
20 **corporations, DOES 1 through 100,**
21 **inclusive,**

22 **Defendants.**

23 **Case No.: C-07-4599 - MHP**

24 **PLAINTIFF/APPELLANT'S NOTICE OF**
25 **INTENT TO DESIGNATE PORTIONS OF**
26 **COURT TRANSCRIPT AND**
27 **STATEMENT OF ISSUES**

FILED

APR - 4 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 TO DEFENDANTS CAPITAL ONE BANK AND CAPITAL ONE SERVICES, INC.,
2 AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT
3 PLAINTIFF/APPELLANT DAVID J. LEE, has ordered copies of the court transcript from the
4 March 3, 2008, hearing regarding the Defendants' motion to dismiss the Plaintiffs' complaint,
5 and intend to use it in connection with their appeal.
6

7 In addition, Appellants will pursue the following issues on appeal:

8 1. Do Plaintiffs have standing under Article III of the United States' Constitution ("Art.
9 III"), California's Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.)("CLRA"),
10 and California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.)("UCL") to
11 maintain their action including
12

13 a. Do Capital One Bank/Capital One Services Inc. credit card holders, respectively,
14 challenging the unconscionability of terms of the Capital One Bank/Capital One Services Inc.
15 arbitration agreement and/or cardmember agreement (excluding the arbitration provision),
16 respectively, and that such unconscionability affects a violation of the CLRA and/or the UCL
17 have to file or actually participate in an arbitration in order to have standing under Art. III, the
18 UCL, and/or the CLRA when the Arbitration Provision explicitly provides 'Claim' [that are
19 subject to mandatory arbitration under the Provision] "means any claim, controversy or dispute
20 of any kind or nature between you and us" arising from "the Agreement and any of its terms ...
21 including the Arbitration Provision (including whether the claim is subject to arbitration)," except for
22 "the validity and enforcement of any class action waiver..." or at all?
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24 b. Is not getting the full value of his contract -- in this instance, an enforceable
25 contractual right to mandatory arbitration contained in the Capital One/Capital One Services Inc.
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1 cardmember agreement for which Plaintiff paid an annual fee – an injury sufficient to establish
2 standing under Art. III, the CLRA and/or the UCL?

3 c. Does the violation of the statutory rights given by the CLRA to not have
4 unconscionable terms inserted in his contract pursuant to Cal. Civ. Code § 1770(a)(19), and by
5 Civil Code § 1670.5, respectively, provide Plaintiffs with standing under Art. III, the CLRA
6 and/or UCL?
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8 2. Do unusual circumstances exist requiring, upon reversal and/or remand to the United
9 States District Court for the Northern District of California, reassignment of his action to a new
10 District Court Judge?”
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12 Dated: April 2, 2008
13

A handwritten signature in black ink, appearing to read "M. Hale", is written over a horizontal line.

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15 Matthew S. Hale, Counsel
16 For Plaintiff/Appellant
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PROOF OF SERVICE

I am employed in the City of Newport News, Virginia. I am over the age of eighteen (18) and not a party to the within action; my business address is P.O. Box 1951, Newport News, VA 23601.

On Wednesday, April 2, 2008, I caused to be served by Federal Express overnight courier the foregoing documents: (1) Notice of Appeal to the United States Court of Appeal for the Ninth Circuit, (2) Representation Statement, (3) Civil Appeals Docketing Statement, and (4) Notice of Intent to Designate Portions of Court Transcript and Statement of Issues.

The foregoing documents were served on:

**Mr. James McGuire
Morrison & Foerster, L.L.P.
425 Market Street
San Francisco, CA 94105
Phone: (415) 268-7013**

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on the 2nd day of April 2008 in Newport News, Virginia.



Matthew S. Hale, Esq.